

PT 04-33

Tax Type: Property Tax

Issue: Government Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**BENSENVILLE
PARK DISTRICT,
APPLICANT**

v.

**ILLINOIS DEPARTMENT
OF REVENUE**

**No. 03-PT-0081
(03-22-0093)
P.I.N.: 03-23-309-009**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Ms. Mary Dickson, of Bond, Dickson & Associates on behalf of the Bensenville Park District (the “Applicant” or the “District”); Mr. Robert Rybica, Assistant State’s Attorney for the County of DuPage, on behalf of the DuPage County Board of Review (the “Board”); Mr. George Foster, Special Assistant Attorney General, on behalf of the Illinois Department Of Revenue (the “Department”).

SYNOPSIS: This proceeding raises the issue of whether real estate identified by DuPage County Parcel Index Number 03-23-309-009 (the “subject property”) qualifies for exemption from 2003 real estate taxes under 35 ILCS 200/15-105 (b). The underlying controversy arises as follows:

The District filed a Petition for Tax Exemption with the Board, which, after reviewing the Petition, recommended to the Department that the requested exemption be denied. Dept. Group Ex. No. 1. The Department accepted the Board’s recommendation

via an initial determination, dated August 28, 2003, finding that the subject property is not in exempt ownership and not in exempt use. *Id.*

The District filed a timely appeal to this determination and later presented evidence at a formal evidentiary hearing, at which the Department and the Board also appeared. Following a careful review of the record made at hearing, I recommend that the Department's initial determination in this matter be affirmed.

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein are established by the admission of Dept Group Ex. No. 1.
2. The Department's position in this matter is that the subject property is not in exempt ownership and not in exempt use. *Id.*
3. The subject property is located in Bensenville, IL and improved with a with a 1.5 story residence. *Id.*
4. The District obtained legal title to the subject property pursuant to the terms of a trustee's deed dated January 30, 2003. Applicant Ex. No. 1.
5. The deed contained the following clause whereby the seller, a private individual, reserved a life estate in the subject property for herself:

Seller [Mrs. Elaine L. Schultz] herein reserves a life estate in the subject property measured by the life of Elaine L. Schultz, **Subject To:** (a) The life estate shall be terminated at the time that Mrs. Schultz no longer resides upon the property; (b) Mrs. Shultz shall have undisturbed use and control of the property until the expiration of the life estate free from any requests or demands of the Purchaser; (c) Mrs. Shultz shall continue to maintain the property in its existing condition at her sole cost including but not limited to all major structures and equipment such as the roof and HVAC equipment; (d) [the purchaser] Park District will petition for exemption from real estate tax. Mrs. Shultz shall pay all real estate taxes until the date of exemption, which the parties believe

will begin with the date of the deed; (e) Mrs. Schultz shall keep the property free from any liens, levies, fines or violations of any law or ordinance; (f) Mrs. Shultz shall maintain homeowners insurance on the property in an amount not less than the replacement cost of the structures. Said insurance shall name the purchaser as an additional insured.

Id.

CONCLUSIONS OF LAW:

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

Pursuant to Constitutional mandate, the General Assembly enacted Section 15-105(b) of the Property Tax Code (35 **ILCS** 200/1-1, 15-105(b)), which states as follows:

Section 15-105. Park and conservation districts

(b) All property belonging to any park or conservation district with less than 2,000,000 inhabitants is exempt. All property leased to such park district for \$1 or less per year and used exclusively as open space for recreational purposes not exceeding 50 acres in the aggregate for each district is exempt.

35 **ILCS** 200/15-105(b).

Property tax exemptions are inherently injurious to public funds, as they impose lost revenue costs on taxing bodies. Accordingly, statutes conferring such exemptions are to be strictly construed, with all facts construed and debatable questions resolved in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987).

The precise debatable question at issue herein is whether the District or the life tenant, Mrs. Schultz, qualifies as the “owner” of the subject property. This issue arises because Section 15-105(b) imposes a very specific exempt ownership requirement through use of the words “belonging to any park or conservation district with less than 2,000,000 inhabitants.” 35 ILCS 200/15-105(b).

There is presently no dispute that the District, itself, is a member of the class of entities that the General Assembly intended to benefit through enactment Section 15-105(b). However, the question of whether the District’s status as titled owner of the subject property is legally sufficient to prove that it qualifies as the “owner” of this property for present purposes is very much in dispute. For the following reasons, I conclude that it is not.

The Department and the Board correctly point out that the “owner” of real estate for property tax purposes is not necessarily synonymous with the entity or individual that holds legal title thereto. People v. Chicago Title and Trust, 75 Ill.2d 479 (1979)); Chicago Patrolmen's Association v. Department of Revenue, 171 Ill.2d 263 (1996)). Rather, the “owner” of real estate is the entity that, in practical terms, exercises the right to control the property and the right to enjoy its benefits. *Id.*

Courts employ multiple factors to determine which entity exercises these rights. For purposes of this particular case, the most important of these factors are whether the written instrument that creates and governs the respective property interests: (1) makes the purported “owner” liable to pay any property taxes assessed against the property (Wheaton College v. Department of Revenue, 155 Ill. App.3d 945, 946 (2nd Dist. 1987); Christian Action Ministry v. Department of Local Government Affairs, 74 Ill.2d 51, 61 (1978)); and, (2) enables that “owner” to receive any tax benefits that the instrument provides (Wheaton College, *supra* at 948).

The trustee's deed whereby this applicant obtained its interest in the subject property clearly states that the life tenant, Mrs. Schultz, is solely responsible for paying all real estate taxes levied against the subject property. Applicant Ex. No. 1. Consequently, granting the exemption that the District now seeks would not allow the District, itself, to obtain the tax savings that the General Assembly intended for it to receive. Rather, it would effectively relieve a private individual, Mrs. Schultz, of her otherwise lawful obligation to pay real estate taxes.

In addition, the remaining terms and conditions of the life estate clearly demonstrate that it is Mrs. Schultz, and not the applicant-District, that retains control over the subject property and enjoys its benefits. For instance, Mrs. Schultz enjoys "undisturbed use and control of the [subject] property until the expiration of the life estate *free from any requests or demands of the Purchaser*" throughout the term of the life estate. Applicant Ex. No. 1 (emphasis added). Furthermore, because the life estate is measured by Mrs. Schultz's own life, she can continue to enjoy her "undisturbed use and control" of this property, without any interference from the District, for so long as she desires. Therefore, from a practical standpoint, it is all but factually and legally impossible for the District to exercise any rights of direction and control over the subject property so long as the life estate remains in effect.

The case of People ex rel, Curry v. Decatur Park District, 27 Ill. 2d 434 (1963), cited by the applicant, does not alter any of the preceding conclusions. In Curry, the Illinois Supreme Court upheld the constitutionality of a predecessor provision to Section 15-105,¹ and further, held that the sole basis for the exemption contained therein was

1. That provision was found in Ill. Rev. Stat. chap. 120, par. 19.18.

ownership. Curry, *supra* at 438. However, the property at issue in Curry was not subject to a life estate or any other form of property interest held by a private individual. *Id.* at 437-438.

The fact that this particular subject property is subject to a life estate that allows a private individual, and not the District, to exercise direction and control over the subject property throughout the duration of the life estate is exactly what distinguishes this case from Curry. Therefore, the applicant's reliance on Curry is misplaced.

Based on the above, the overall conclusion I must reach is that the subject property does not qualify for exemption from 2003 real estate taxes under Section 15-105(b) of the Property Tax Code because the indicia of ownership rest squarely with a private individual whom the General Assembly did not intend to benefit through enactment of that provision. Therefore, the Department's initial determination in this matter should be affirmed.

WHEREFORE, for all the foregoing reasons, it is my recommendation that real estate identified by DuPage County Parcel Index Number 03-23-309-009 not be exempt from 2003 real estate taxes.

Date: 9/7/2004

Alan I. Marcus
Administrative Law Judge